IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7709 of 2001

with

SPECIAL CIVIL APPLICATIONS Nos 10085/2001, 1050/2002, 1967/2002 and 8894/2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINODKUMAR R. SHAH & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 7709 of 2001
MR HARDIK C RAWAL for the Petitioners
MR MS RAO, AGP for Respondents Nos. 1,3
MR DA BAMBHANIA for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 23/06/2004

COMMON ORAL JUDGEMENT

The petitioners in all these petitions are the former employees of the Gujarat Slum Clearance Board, the respondent No.2 herein (hereinafter referred to as 'the Board').

Learned advocate Mr.Rawal states that all these petitions involve identical questions. The petitions are, therefore, with the consent of the learned advocates, disposed of by this common order.

It is the common ground that pursuant to the Circular dated 13th December, 2000 issued by the Board all the petitioners applied for voluntary retirement. They came to be voluntarily retired from service on 15th March, 2001 or 31st March, 2001 as the case may be. They were paid the retiral dues as agreed under the Circular dated 13th December, 2000 and they have accepted such dues.

Mr.Rawal has submitted that by Circular dated 13th December, 2000 the employees of the Board were given option to opt for voluntary retirement on terms and conditions mentioned in the said Circular. Though it was said to be voluntary retirement, virtually the petitioners were compelled to opt for voluntary retirement. The petitioners were given understanding that unless they opted for voluntary retirement, after 31st March, 2001 they would be discharged from service. True to form, on 3rd March, 2001, the Board issued a circular that 169 employees had applied for voluntary retirement and such applications were accepted. The rest of the employees shall not be paid pay and allowances after 31st March, 2001. Mr.Rawal has submitted that by the aforesaid circular dated 13th December, 2000 an atmosphere was created where the employees were given impression that the Board would be closed by 31st March, 2001 and the employees who did not opt for voluntary retirement would be discharged from service. Thus, under pressure of losing the job the petitioners were compelled to opt for voluntary retirement. One of the petitioners i.e. the petitioner No.1 in Special Civil Application No.10085/2001 had given an application on 17th February, 2001 withdrawing his option for voluntary retirement. Nevertheless, all the employees have been compulsorily retired. Mr.Rawal has submitted that even today more

than three years after 31st March, 2001 the Board is not yet closed. As many as 26 employees are still in service of the Board. The petitioners, therefore, pray that their voluntary retirement be set aside. They be reinstated in service of the Board and be paid consequential benefits.

In support of his contention Mr.Rawal has relied upon the judgments of the Hon'ble Supreme Court in the matters of Devi Krishnan Goyal v/s. District Inspector of Schools, Ghaziabad & Ors. [JT 1988(4) S.C. 201]; of J.N.Srivastava v/s. Union of India and another [AIR 1999 SC 1571] and of the Bombay High Court in the matter of Shubhangi Sopanrao Bhosle v/s. A.D.Deshpande and Ors. [1995(1) LLJ 1124].

All the aforesaid judgments reiterate the principle that the concerned employee has a right to withdraw the application for voluntary retirement made by him before such retirement becomes effective. The principle is quite well accepted and does not require further deliberation.

In answer to the notice issued by this Court, the Board has appeared and has contested the petitions. It is denied that any of the employees of the Board was compelled to opt for voluntary retirement. It is stated that all the petitioners had given their option for voluntary retirement pursuant to the Circular dated 13th December, 2000 after considering the pros and cons of the offer. The said options were scrutinised and processed by 18th January, 2001. The voluntary retirement was made effective from 15th March, 2001 or 31st March, 2001. Each of the employees has received the amount of retirement benefit without any objection. The petitioners are now estopped from withdrawing the option given by them and from challenging the action of the Board in retiring the petitioners voluntarily. It is also denied that any of the employees had withdrawn the option for voluntary retirement given by him.

In the present set of petitions the petitioners have made a general statement that they were compelled to opt for voluntary retirement. Except the vague statement there are no specific averments made with respect to the pressure or coercion exerted by the Board or its officers. Further, at the relevant time neither of the petitioners made a complaint to any higher authority or the State Government that they were compelled to opt for voluntary retirement. A general representation came to be made by union against the Voluntary Retirement Scheme

as late as on 15th March, 2001 by which date many of the employees had already been retired from service. Barring the petitioner No.1 in Special Civil Application No.10085/2001 none of the other petitioners appears to have made application withdrawing the option for voluntary retirement. It is, therefore, not believable that petitioners who are grown-up people serving in the Board for 20 years or more could not weigh the pros and cons of the offer of voluntary retirement made by the Board or that they were compelled to opt for voluntary retirement. At the time of receiving the retiral benefits also neither of the petitioners has raised any objection. It is, therefore, believed that the complaint of duress and coercion is an afterthought and cannot be believed. The petitioners at this belated stage cannot be permitted to opt out of the voluntary retirement which they had applied for and accepted as far back as on 15th March, 2001/ 31st March, 2001.

No other contention is raised in the present set of petitions. All the petitions are dismissed. Notice issued in each of the petitions is discharged. Registry shall maintain copy of this order in each petition.

It appears that some of the petitions where the petitioners had specifically withdrawn their option for voluntary retirement have been admitted by this Court. In the present case, the petitioner No.1 in Special Civil Application No.10085/2001 one Shri Prakash Namdev Patil appears to have made application on 17th February, 2001 withdrawing his option given for voluntary retirement. Though there is a denial that any of the petitioners had applied for voluntary retirement there is no specific denial that the aforesaid application dated 17th February, 2001 was not received by the Board. It is, therefore, clarified that the said petitioner Shri Prakash Namdev Patil shall have liberty to file fresh petition in the subject matter of this petition.

(Ms. R.M.Doshit, J.)

/sakkaf